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KNOBBE MARTENS OLSON & BEAR LLP			PARKER, BRANDI P	
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FOURTEENTH FLOOR			ART UNIT	PAPER NUMBER
IRVINE, CA 92614			3624	
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			12/15/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/802,129	LUHR, STANLEY R.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRANDI P. PARKER	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 August 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Acknowledgements***

1. The following is a Final Office action in response to communications filed on 8/5/2008. Claims 1-29 are pending, claims 1, 5-10, 12, 14-15 have been amended and claims 18-29 are newly added.

### ***Response to Applicant's Remarks***

2. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claims 1, 9, 12, 14, 18, 22, 24-26, and 28-29, contain one or more of the following indefinite language regarding the respective limitations:

- a. ***At least some***
- b. ***At least in part***
- c. ***At least a portion of***

The language renders the claims indefinite and appropriate correction is required to detail specifically how the limitations affect the claims.

6. Furthermore, claim 1 also discloses a ***pre-specified*** monetary cost to repair. Such limitation appears to be a subjective determination that renders the claim indefinite. Appropriate correction is required.

7. Dependent claims 2-8, 10-13, 15-18, 19-23 and 24-28 are rejected for being dependent upon rejected claims 1, 9 14 and 29 respectively.

#### ***Examiner Notes***

The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as

potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 5 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall (US 2003/0229509) in view of Bandemer (US 7107278).

10. With respect to claims 1 and 29, Hall teaches a computer-implemented method for generating a risk assessment of a builder, the method comprising:

d. providing a database that comprises inspection checkpoints for use in assessing builder risk, wherein at least some of the inspection checkpoints include information reflective of particular types of construction defects (paragraphs 0011, 0014, and 0038).

- e. selecting a subset of the inspection checkpoints to use to inspect one or more construction projects of the builder, where the subset of inspection checkpoints is selected by a computer system (paragraph 0017),
- f. using at least the results of the subset of inspection to programmatically generate a risk assessment of the builder (paragraph 0020).

Hall does not explicitly teach associating costs of repair associated with inspection checkpoints or past defect claim and ranking the checkpoints. However, Bandemer teaches:

- g. obtaining input about a builder and about projects associated with the builder (column/line 3/53-58, regarding contractor information; 6/58-62, regarding project information);
- h. a database comprising stored data reflective of estimated monetary costs of repair associated with particular inspection checkpoints (column/line 6/27-49, regarding defect observation and location point, 13/3-16, regarding cost of repair for each defect);
- i. accessing stored data about past construction defect claims that includes at least one of: information reflective of a frequency of past construction defect claims and information reflective of costs associated with past construction defect claims (column/line 13/17-37, regarding the retrieval of the document information regarding location point of defect and associated costs for construction defect litigation);

j. recording within computer storage results of the inspection based on the subset of inspection checkpoints as applied to one or more construction projects of the builder (column/line 6/27-49, regarding the storing of observed information);

It would have been obvious to one of ordinary skill in the art to include the business system of Hall with the ability to associate costs of repair associated with inspection checkpoints or past defect claim and ranking the checkpoints as taught by Bandemer since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Furthermore, the data observation management system 62 and database 300 in Bandemer can be used to sort by basic sorting functions the data including data about past construction defect claims and monetary costs of to rank at least a portion of the inspection checkpoints, combined with the automatic selection of inspection points by the system in Hall.

11. Regarding claim 5, Hall further teaches reporting a risk assessment as a risk assessment score (paragraph 0020).

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12. Claims 2, 4, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall (US 2003/0229509) and Bandemer (US 7107278), in further view of Lawrence (US 2004/0083165).

13. Regarding claim 2 and 4, Hall in view of Bandemer does not directly teach specific input about projects. However, Lawrence teaches wherein the input about the projects comprises information about construction methods and materials planned for the projects (paragraph 0048).

It would have been obvious to one of ordinary skill in the art to include the business system of Hall in view of Bandemer with the ability to input specific project information as taught by Lawrence since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

14. With respect to claim 19, Bandemer further teaches, wherein the stored data about past construction defect claims further comprises information about the builder's past history of construction defect claims (column/line 627-49, regarding defect observation counter and relational database of gathered information).

15. Regarding claims 20 and 21, Bandemer provides the location points where defects were observed in a relational database similar to Microsoft Access. (See Fig.

5A) With the sort feature in this database, it would be obvious to one with ordinary skill in the art to ranking the checkpoints based on frequency of occurrence. Therefore, it would be a predictable result of the system of Hall and Bandemer in view of Lawrence to use the stored data about past construction defect claims to rank inspection checkpoints associated with construction defect claims and financial costs.

16. As to claim 22, Lawrence further teaches calculating one or more adjusted results for the subset of inspection checkpoints, based at least in part on a predicted legal risk that a construction defect associated with an inspection checkpoint will be discovered and/or will generate a legal claim (paragraph 0027).

17. Claims 6-8 and 14-18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall (US 2003/0229509) and Bandemer (US 7107278), in further view of Alverson et al (2005/0033628)

18. With respect to claims 14 and 23, Hall in view of Bandemer teaches the method of claim 1, including a risk assessment. Hall in view of Bandemer does not directly teach receiving builder response for a risk assessment. However, Alverson teaches receiving input about the builder and the projects to select from the database a subset of questions to present to the builder; receiving responses to the subsets of questions from the builder, and storing said responses within computer storage (paragraph 0036 and 0042).

It would have been obvious to one of ordinary skill in the art to include the business system of Hall in view of Bandemer with the ability to receive builder response for a risk assessment as taught by Alverson since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

19. Regarding claim 6, Alverson teaches wherein using the input to select a subset of questions and inspection checkpoints comprises selecting questions and inspection checkpoints for assessing at least one component factor from the set consisting of: customer service, data tracking, prior and active claims, legal contracts and insurance, and safety programs (paragraph 0042).

20. As to claims 7-8 and 15-16, Alverson teaches wherein reporting the builder's risk assessment further comprises reporting scores for the component factors that influence the builder risk assessment (paragraph 0038).

21. With respect to claim 17, Alverson teaches obtaining information from more than one project of the builder to determine a sample of the builder's operations (paragraph 0025).

22. Regarding claim 18, Bandemer further teaches wherein obtaining additional information about the builder and about at least one of the builder's projects further comprises selecting the one or more checkpoints based, at least in part, on data reflective of estimated monetary amounts for potential repairs associated with the one or more checkpoints, such that the estimated monetary amounts for potential repairs associated with the selected one or more checkpoints are collectively substantially equal to a pre-specified amount (column/line 13/17-37, regarding the retrieval of the document information regarding location point of defect and associated costs for construction defect litigation).

23. Claims 9-10 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandemer (US 7107278) in view Hall (US 2003/0229509)

24. With respect to claims 9 and 25, Bandemer teaches a system comprising:

- k. a user interface for user entry of data regarding a builder and building projects associated with the builder (Fig. 5A);
- l. a database comprising information reflective of inspection checkpoints for conducting builder risk assessments and the cost of the defects(Fig. 5A);, wherein the information reflective of the inspection checkpoints comprises statistical information reflective of a frequency and costliness of building construction problems associated with the inspection checkpoints (column/line

6/27-49, regarding defect observation and location point, 13/3-16, regarding cost of repair for each defect);

m. a first component configured to receive from the user interface the data regarding the builder and the builder's projects and to select from the a subset of inspection checkpoints to use to inspect construction by the builder (column/line 6/27-49, regarding defect observation and location point);

Bandemer does not directly teach calculating a risk assessment score. However, Hall teaches:

n. a second component that calculates a risk assessment score for the builder based at least in part on results of the inspection (paragraph 0020).

It would have been obvious to one of ordinary skill in the art to include the business system of Bandemer with the ability to calculate a risk assessment score as taught by Hall since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

25. Regarding claims 10 and 24, Bandemer further teaches wherein the database further comprises at least one of the set consisting of: information about proper construction practices associated with the checkpoints, historical information about costs associated with repairing construction faults associated with the checkpoints, information about a statistical frequency of liability claims regarding the checkpoints; and a measure of relevance of proper construction technique for the checkpoints to a risk assessment for projects of various types and various geographical locations (column/line 13/17-37, regarding the retrieval of the document information regarding location point of defect and associated costs for construction defect litigation).

26. Claims 11-13 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandemer (US 7107278) and Hall (US 2003/0229509) and, in further view of Alverson et al (2005/0033628)

27. With respect to claim 11, Bandemer in view of Hall teaches the system of Claim 9. Bandemer in view of Hall does not directly teach assessing the specific issues presented in claim 11. However, Alverson teaches wherein the database further comprises questions for assessing the builder regarding at least one of the set consisting of: design issues, communications systems, builder knowledge, customer service, data tracking practices, prior and active claims history, insurance and other legal documents, and safety programs implemented (paragraph 0042).

It would have been obvious to one of ordinary skill in the art to include the business system of Bandemer and Hall with the ability to asses specific types of risk factors as taught by Alverson since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

28. Regarding claim 12, Alverson further teaches wherein the first component is further configured to select the subset of inspection checkpoints and a subset of the questions based at least in part on the input data; and wherein the second component is configured to calculate the risk assessment score for the builder based at least in part on builder responses to the subset of questions (paragraph 0036 and 0042).

29. As to claim 13, Hall further teaches wherein the first component is further configured to select the subset of questions and inspection checkpoints based at least in part on a set of customization rules (paragraph 038).

30. With respect to claims 26-28, Hall teaches the calculation of a risk assessment score. The calculation of a risk occurrence factor is a percentage calculation of a count divided by a total, which is old and well known in the art. Thus, the risk occurrence factor for a checkpoint is calculated by dividing a number of times unsatisfactory

construction practice is observed for a checkpoint by a number of instances of the checkpoint inspected is a predictable result of Bandemer and Hall in further view of Alverson. Furthermore calculating a projected risk per year for each checkpoint that is based on the risk occurrence factor for the checkpoint is simple multiplication by the number of times a defect is observed in a year, which also old and well known in the art. Therefore, one with ordinary skill in the would be able to use the data provided in the system of Bandemer and Hall in view of Alverson to calculate risk occurrence by old and well known mathematical techniques.

### ***Conclusion***

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yadav-Ranjan (US 2004/0059592, regarding contract risk assessment scoring system).
32. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
33. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

35. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley B. Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/

Examiner, Art Unit 3624

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624